

APPENDIX E**EXCERPTS FROM PLAINTIFFS' DEPOSITION TESTIMONY INDICATING VALUE OF DEFENDANTS' VALSARTAN
AFTER LEARNING OF THE RECALL****I. RECALLED VALSARTAN WAS EFFECTIVE / PLAINTIFF CONTINUED TAKING RECALLED VALSARTAN
FOR A PERIOD OF TIME AFTER LEARNING OF THE RECALL**

PLAINTIFF DEPOSITION	DEFENSE OPPOSITION EXHIBIT #¹	PAGE:LINE	TESTIMONY
Borkowski, Alphonse May 18, 2021	Exhibit 2	41:5-19	<p>Q. So it looks like from this chart here the valsartan -- you started taking these valsartan products in June of 2015 and stopped sometime around August of 2018. During that time, did you experience any symptoms or ill effects of hypertension?</p> <p>A. As to? What do you mean?</p> <p>Q. I guess what I'm trying to get at is was the valsartan effective at treating your hypertension?</p> <p>A. It appeared to be.</p> <p>Q. Did Dr. Botsoglou ever indicate there was an issue with the valsartan and your hypertension treatment?</p> <p>A. Not that I remember.</p>

¹ With limited exceptions, for the majority of the putative class representatives, Plaintiffs failed to timely designate portions of those deposition transcripts as confidential as required by the applicable Confidentiality and Protective Order. *See* ECF 139, ¶ 17(B) (“If no party or deponent timely designates PROTECTED INFORMATION in a transcript, **none of the transcript will be treated as confidential.**”); ECF 1661, ¶ 17(B). Due to Plaintiffs’ failure to make specific designations to preserve confidentiality over the deposition transcripts, Defendants have filed all deposition transcripts for putative class representatives under seal in an abundance of caution in order to ensure that no PHI is inadvertently disclosed. However, by doing so, Defendants do not concede or admit to the confidentiality of any portions of those deposition transcripts.

PLAINTIFF DEPOSITION	DEFENSE OPPOSITION EXHIBIT # ¹	PAGE:LINE	TESTIMONY
		72:16-73:3	<p>[...]</p> <p>Q. When did you contact Dr. Botsoglou about an alternative treatment?</p> <p>A. When I seen the article and matched up the thing, the numbers, whatever.</p> <p>Q. Okay. What did Dr. Botsoglou tell you to do?</p> <p>A. At the time, keep taking what I was taking.</p> <p>Q. Did he schedule you for an appointment? When you say keep taking what you were taking, are you speaking about the valsartan?</p> <p>A. Correct.</p> <p>Q. Okay.</p> <p>[...]</p> <p>103:24-104:1</p> <p>Q. Did you continue taking valsartan until you obtained a prescription for irbesartan?</p> <p>A. Until he switched me.</p> <p>[...]</p> <p>105:11-25</p> <p>Q. And you didn't contact your physician to discuss an alternative treatment until after you had learned about the recall, correct?</p> <p>A. He's the one who made the decision, not me.</p> <p>Q. I understand. Just in terms of the timeline, you contacted your physician once you had learned about the recall, correct?</p> <p>A. Correct.</p>

PLAINTIFF DEPOSITION	DEFENSE OPPOSITION EXHIBIT # ¹	PAGE:LINE	TESTIMONY
			<p>Q. Okay. So you continued to take the valsartan medication after your physician told you to keep taking it, correct?</p> <p>A. Sure.</p>
Bruner, Billy Joe May 7, 2021	Exhibit 3	108:13-110:5	<p>Q. Did you have one or multiple conversations with Dr. Boulware about hypertension medications being recalled?</p> <p>A. Multiple times.</p> <p>Q. Okay. Let's -- let's go through the first conversation that you -- you had with him. Was -- was that first conversation about the Valsartan recall?</p> <p>A. Yes.</p> <p>Q. And what did he tell you in that first conversation?</p> <p>A. That he would -- that they would check to see what they could learn about it.</p> <p>Q. Did he give you any recommendations at that point?</p> <p>A. Not at that point, no. Not until he checked it out.</p> <p>Q. Did you continue to take Valsartan at that point?</p> <p>A. I did, yes.</p> <p>Q. And that was the Valsartan from Walgreens, correct?</p> <p>A. Yes.</p> <p>Q. Then did he call you back?</p> <p>A. Yes.</p> <p>Q. So that would have been your second conversation? What was --</p>

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			<p>A. Yes.</p> <p>Q. -- the substance of that conversation?</p> <p>A. That they learned that it was -- that Valsartan was under recall.</p> <p>Q. Did he tell you to continue taking Valsartan?</p> <p>A. No. He prescribed Losartan.</p> <p>Q. And was this second conversation -- how -- how much time had passed between the first and the second conversation?</p> <p>A. I -- I -- I don't know how much time it was.</p> <p>Q. A couple of days? A month?</p> <p>A. No, it wasn't -- it wasn't a month. It was probably within the week.</p>
Cisneros, Samuel December 3, 2021	Exhibit 6	99:24-100:10 ²	<div style="background-color: black; width: 100%; height: 100%;">[REDACTED]</div>

² Plaintiffs have designated the cited testimony as confidential. Defendants do not concede that the cited testimony has been properly designated in accordance with the definition of “PROTECTED INFORMATION” as defined in the Amended Confidentiality and Protective Order [ECF 1661] (the “Order”) and do not waive their right or ability to subsequently challenge such designations as permitted by ¶ 20 of the Order.

PLAINTIFF DEPOSITION	DEFENSE OPPOSITION EXHIBIT # ¹	PAGE:LINE	TESTIMONY
Gildner, Leland February 4, 2021	Exhibit 11	74:1-23	Q. Is this the letter that you recall receiving about the recall? A. Yes. Q. Okay. Do you recall receiving it on or about August 23rd of 2018? A. Yes. Q. What did you do after you received this letter? A. I believe at my next doctor's appointment I brought it to his attention. Q. Is prior to receiving this letter on August 23rd of 2018, had you been aware that Valsartan had been recalled? A. No. Q. So through August 23rd of 2018, were you taking Valsartan? A. I believe so, yes. Q. When you received this letter, did you stop taking Valsartan? A. No. Q. Did you continue to take it through your next doctor's appointment? A. Yes. [...]
		76:17-77:20	Q. It was your view that you wanted to keep taking the Valsartan after you received the recall letter, correct? [...]

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			<p>A. It was my decision to continue taking it until I talked to my doctor.</p> <p>Q. Okay. What was the reason you reached that decision?</p> <p>A. My personal health and safety.</p> <p>Q. Okay. So in other words, you wanted to keep taking the Valsartan to control your blood pressure, correct?</p> <p>A. Yes.</p> <p>[...]</p> <p>Q. So the Valsartan was effective in controlling blood pressure at the time that you received this letter, August 23rd, of 2018. Is that fair?</p> <p>[...]</p> <p>A. I understand it was my doctor's professional opinion that I take that medication, which I did.</p>
McGilvery, Flora February 11, 2021	Exhibit 16	189:19-190:4	<p>Q. Whichever recall letter you got, Wal-Mart, Express Scripts, whatever, once you first found out about the recall, did you ever take any more Valsartan HCTZ?</p> <p>A. Yes, sir, I did.</p> <p>Q. Okay. For how long?</p> <p>A. Until I could get the medication changed because I'm afraid not to take anything if my blood pressure gets out of control. So it looks like I had some medicine change, but I did realize the side effects for what the cancer did, so I did take it.</p>

[illegible]

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		122:14-123:1	<p>[...]</p> <p>A. Yes. I've never stopped taking valsartan.</p> <p>Q. When you visited Dr. Gleckel after the recall, did you discuss switching from valsartan to another medication at any point?</p> <p>A. No.</p> <p>[...]</p> <p>Q. Do you know who manufactured any of the valsartan that you've purchased since the recall?</p> <p>A. No, I don't.</p> <p>Q. And have you gone out of your way to try to avoid valsartan or any other medication manufactured by any of the defendants in this case?</p> <p>A. No.</p> <p>Q. Have you observed any difference in the effectiveness of the valsartan during the time that you were taking it?</p> <p>[...]</p> <p>A. No.</p>
Wineinger, Brian (March 16, 2021)	Exhibit 24	123:10-124:11	<p>Q. Do you recall exactly when you stopped taking valsartan medication? So we've established that was the last date that you, or perhaps your wife, purchased valsartan. But do you remember when you last consumed valsartan?</p> <p>A. I would probably have taken it up to the end because I have two evils here: I can have a heart attack; or I can take the medicine until I get a replacement. And that's more than likely what I did.</p>

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			<p>Q. Okay. So when you say “right up until the end,” can you just explain what you mean by that --</p> <p>A. Until I got --</p> <p>Q. -- as “the end”?</p> <p>A. Well, until I called Dr. Beerbower and got a refill of something else, and that’s when the irbesartan, I think, came in.</p> <p>Q. Okay.</p> <p>A. So I would have stayed on it up to the point I got my new medicine, and I would have picked that medicine up as soon as it was filled. I would be pretty sure about that because I didn’t want to take something that was contaminated -- that’s from getting the recall -- not any longer than I had to.</p>

II. RECALLED VALSARTAN WAS INEFFECTIVE OR “WORTHLESS” / WOULD NOT TAKE RECALLED VALSARTAN

PLAINTIFF DEPOSITION	DEFENSE OPPOSITION EXHIBIT #	PAGE:LINE	TESTIMONY
Erwin, Eric (January 19, 2021)	Exhibit 10	138:22-139:6	Q. So if it turns out that the actual pills you had in your possession were not contaminated, would you agree with me that those pills still had value? [...] A. I mean, it depends on the manufacture, I guess. I mean, if these - - my pills were manufactured in a facility that was contaminated, then no. [...]
		140:17-141:5	Q. Okay. And your view is it's only the valsartan products that either were contaminated or were manufactured in contaminated facilities that lost value. Is that right? [...] A. Yeah, bottom line, I mean, I don't think anybody would want to take a pill from somewhere that could be contaminated, especially when it's approved by the FDA. You kind of trust them in what -- what you're putting in your body.

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Longwell, Veronica (January 26, 2021)	Exhibit 15	113:6-11	Q. So your understanding is regardless of when it was manufactured, you're saying that every pill of valsartan was recalled, in your understanding?
			A. In my understanding, every pill of valsartan has no value to me.
			[...]
		124:5-125:4 ³	[REDACTED]
			[REDACTED]
			[REDACTED]
			[REDACTED]
		Q. How come?	
		A. I have no proof, outside of a chart of numbers, that they weren't contaminated, and unless you can physically take pills and prove that to me, the name valsartan, regardless, has no value to me. It was a danger to me.	

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Means, Brittney (October 10, 2021)	Exhibit 25	174:15-21	Q. Okay, but you've alleged in this case that the valsartan was contaminated with nitrosamines and so then you wouldn't have paid for them, right? A. I wouldn't have bought something if I knew it had something in it that could potentially be damaging to my body, yes. That's true. [...]
		197:13-198:10	Q. Sure. You've testified that you would not have bought the valsartan if you knew it was contaminated, if you knew it was related to a carcinogen, and my question is do you agree that you would not have purchased that valsartan and therefore, it had no value in your eyes? [...] A. So I wouldn't have purchased. So, no, I would not have purchased the valsartan if I had known that it potentially had carcinogen in it and it does make -- yes, I guess is a way I could answer that. Q. I guess what I'm asking, as a result of that, do you agree that it was worthless to you? [...] A. Can you elaborate what you mean by "worthless"? Q. Sure. You wouldn't have purchased it because of the risk to you regarding cancer, correct? A. Yes.

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Semmel, Lawrence (2/2/2021)	Exhibit 23	82:15-83:18	<p>Q. If a test showed that the Valsartan that you bought didn't contain any contaminants, that meant that you purchased exactly what you thought you were purchasing, right?</p> <p>[...]</p> <p>A. I -- I wouldn't trust taking it, is all. I'm trying to say. It's a contaminated product. I know what you're saying, if that one pill wasn't. But how about the -- if there was 20 in there that were? I don't know that.</p> <p>Q. Okay. What if every pill that was in that bottle turned out to not contain any contaminant, would you agree that those pills still had value?</p> <p>[...]</p> <p>A. No, because I -- I got a letter that the product was contaminated, right? And down through the chain, everybody -- somebody knew it, and I was not going to take it. That's, I guess, my final answer. Because I don't know how else to answer that.</p>